VIRGINIA LAW REGISTER

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When the writer, in an idle hour during the month of August, in order to "make copy," wrote a short article entitled "Reminiscences," he had little idea that it would attract any more than a passing notice. He has been much flattered by many kind letters urging him to do something more in the same line. "Will there ever be any history of the Virginia Bar?" one writer asked. "Why shouldn't there be? Surely it was a great bar in the Antebellum days. What record have we of it? Suppose a lawyer in each circuit had jotted down something of the lawyers and judges in those days? What an invaluable thing it would be now! We had a great bar, too, from 1870 up to a few years ago. We have one now, doubtless. What record have we of the bar from 1870, say, to 1900? What a record we might have had—might have yet if lawyers would only pay some of their debt to the profession by taking a little time and writing reminiscences even as slight and sketchy as yours. Appeal to them to do so. Keep up the work yourself. How valuable was Judge Christian's contribution published some years ago in the REGISTER."

Reminiscences—II.

And the writer gladly makes this appeal to his contemporaries. Sit down some evening this winter, give the REGISTER an article on the judges and lawyers you knew twenty-five or thirty years ago.

And encouraged by the friend's letter and perhaps because it is rather easy work the writer recalls some of the traits of that pure, upright judge, G. A. Wingfield, of whom he wrote irreverently in our September number as "Old Wink." Judge Wingfield had his eccentricities of speech and manner—who has not? We think he rather affected plain, blunt speaking and was purposely careless in manner. He had as strong and clear a mind

as any man in the State and no man ever wore the judicial ermine who loved justice more than he did, or did it any better.

> "In Israel's courts ne'er sat an Abethdin,
> With more discerning eyes or hands more clean."

At the same time it was not always pleasant to practice before him, for he was rough and sarcastic at times. Any pretense, any pomposity, any affectation in any lawyer who appeared before him, met with the most overwhelming rebuke. He was impatient at times, especially when the end of the term was nigh at hand and he wanted to get away, and very ill-disposed to verbosity or long-winded arguments at all times. He had a splendid bar in his circuit. They respected him though they often gave him as good as he sent when he met them with sarcasm, and occasionally rudeness. But no man ever deserved more what he called his epitaph. He failed of re-election in his old age, and when he signed his last order, underneath it he wrote "I Samuel 12 v. 3." Whilst we know the profession is familiar with the great Law Book—or ought to be—we will cite the reference.

"Behold, here I am: witness against me before the Lord and before His anointed: whose ox have I taken? or whose ass have I taken? or whom have I defrauded? whom have I oppressed? or of whose hand have I received any bribe to blind mine eyes therewith? and I will restore it to you." He was nearly blind when he wrote this his last judicial signature, and no one with any feeling who knew him can fail to feel touched as he looks at the trembling signature and the almost illegible reference. He did not survive very long after his retirement.

One of his peculiarities was that he never permitted any lawyer to qualify in his circuit who did not produce for his inspection his license to practice law. The result was very embarrassing at times; for very few lawyers in the old days ever looked at their licenses after they got them, and generally stuck them away in some forgotten pigeonhole. The reason for this strictness, it is said, grew out of the fact that a Northerner who remained in a neighboring county in what was afterwards Judge Wingfield's circuit, commenced practicing law without a license —it was in reconstruction days, and the bars were down in those

days. Being a man of unusual ability he soon got into an excellent practice. But Judge Wingfield took a violent prejudice to one whom he called a "D—— carpetbagger" and announced no man should be allowed to practice in his court who did not show his license, unless he had previously qualified in the circuit and not before a "military judge." The lawyer in question never did qualify or practice in his circuit. But this ruling led to a great deal of inconvenience. He used it with terrible effect once on a lawyer from a large city who was of high standing, character and ability but who had a rather lofty manner. He came into the judge's circuit to argue a very important chancery cause involving a large sum of money and many delicate questions. On the morning set for argument the judge was on the bench promptly and the case called but the said lawyer was tardy and the wrath of the old judge was at the boiling point when he came in very deliberately, removed his silk hat, pulled his gloves off and dropped them into it, removed his overcoat and then bowing to the Bench said he believed the case of Blank *v.* Blank was called and he appeared for the plaintiff.

The old man glared at him and blurted out, "What's your name?" "Oh, I beg your Honor's pardon! I am so and so, of such and such a bar." "Have you ever qualified in this co'ot?" said the judge. "Really," replied the gentleman, "I do not believe I have ever gone through that form in this circuit," and then turning to a brother lawyer, requested him to make the motion which was accordingly done, and the gentleman moved to the Clerk's desk to take the usual oath. "Hold on! Hold on!" the old judge growled. "Whar's your license?" "My license?" said the lawyer, decidedly puzzled. "Yes, sir, your license to practice law." "Why, my dear sir," said the lawyer, "I have practiced law for forty years and I do not think I have seen my license but once in that time." "Makes no difference to me," said the judge. "*I've* got to see it before you qualify in my co'ot."

The incident would have been laughable had it not been that it was very serious. This distinguished lawyer had come a good many miles on a large retainer and was met at the outset with an insurmountable obstacle. In vain he pled that he was a prac-

titioner in the largest city in the State; in the Supreme Court of Appeals of Virginia; in the Supreme Court of the United States. Member after member of the local bar and some eminent visiting practitioners arose and testified to these facts, but the judge was obdurate. "No man pleads as an attorney at the bar of my co'ot until I see his license," he said. Great drops of sweat rolled down the distinguished lawyer's face and he stood angry and yet sorrowful before his tormenter. Finally as he turned to pick up his hat an idea seemed to strike the judge. "Hold on! Hold on!" he said. "I tell you what I'll do. You can't qualify in my co'ot but I'll hear you *in this case as an amicus curiae.*" And then as he sank back in his seat he was heard to murmer, "But no man is a friend of this co'ot that keeps it waitin' fifteen minutes and then puts on aars."

But we can venture to say without fear of successful contradiction that he heard the great lawyer patiently and with absolutey impartial mind and if he had the right of the case he won it. The writer of these lines believes he is the only lawyer who ever qualified in any of his courts without exhibiting his license, and his impudence was the probable cause. He, when a very young practitioner, went with his father to Nelson Court and reaching there in the afternoon found the bar and the judges seated under the trees, and after the usual greetings was introduced as a young limb of the law. "I think yo'd better say twig," the old man chuckled, and of course we all laughed. "Got your license with you?" some one asked. A cold chill ran over the writer's body as he remembered that he had carefully got it out and laid it on his desk and there it still lay. "No indeed; what use can I make now of that old piece of foolscap?" he asked.

"Why, you can't qualify unless the judge sees your license," "No sah," the old judge blurted out, "No license, no qualification." "Oh, well!" the writer said, with a nonchalence he did not feel, "I can easily settle that." "I'd like to know how, sah?" the old gentleman said. "Why, I'll just decline to qualify and thus deprive the court of the pleasure of hearing me."

There was quite a laugh and to everybody's surprise, when Mr. Whitehead the next morning formally introduced me to the court, which didn't open its mouth, I went around to the clerk's

desk and was sworn in. I was not *permitted* to qualify, I just qualified.

That license. It really ought not to have been exhibited. It was written on a half sheet of foolscap paper, signed by a circuit judge and a judge of the Court of Appeals. The latter put the writer through a rather severe, but perfectly fair examination. The circuit judge asked him one question. " When do they cut clover hay?" "When it's ripe, I suppose," he replied. "Hand me your license," said the judge. "If you are as big a fool of a farmer as that, I suppose you'll make a lawyer. They cut it when it's yet green."

It may be asked why these anecdotes instead of more serious observations, and may they not reflect somewhat on the judiciary? We think not. It is the amusing side of the lawyer's life we ought to chronicle, not forgetting now and then to present a more serious view. We have borne, and bear, testimony to the worth, learning, ability of these judges of ours, and these lighter sides of their lives and of our lives at the bar may not "point out a moral," but we do think may serve to "adorn a tale."

The Effect of Woman Suffrage on Our Present Laws.

The Press reports Judge James McLemore as ruling that women are not competent as jurors, as Section 5984, Code of 1919, provides that "all male citizens" are liable to jury service. At first glance Judge McLemore's ruling seems unquestionably right. And yet after carefully reading the section can it be said that women are absolutely debarred? The statute says "all male citizens over twenty-one years of age, etc., shall remain and be liable to serve as jurors," and then follows a long list of disqualified persons and of persons excused from jury service. But in saying that all male citizens shall *be liable,* does that mean that any other person is disqualified or excused other than those named in the section? "Liable" means accord- to the Century Dictionary, "bound in law or equity," "fit, suitable." Of course the first definition is the legal one. Therefore women are not bound in law or equity to serve as jurors.

But suppose the jury commissioners select a number of women as jurors, put their names in the box and they are drawn for service and willing to serve. Can the judge arbitrarily decide that they are not qualified jurors if in other respects they measure up to the qualification of jurors? The question is not as free of doubt as it may at first glance seem, but we do not think there is much danger of the commissioner's putting any woman's name in the box before the legislature has acted.

But an interesting question arises as to whether the amendment to Section 133 of the Constitution allowing women to act as school trustees is now necessary. That section reads, "Each magisterial district shall constitute a separate school district unless otherwise provided by law. In each school district there shall be three trustees selected in the manner and for the term of office prescribed by law." Now the law is to be found in Section 631 of the Code of 1919. "The school trustees in office when this Code takes effect shall continue in office until their respective terms expire, and thirty days before the first of September of each year the school trustee electoral board shall appoint one trustee for each school district to fill the vacancy then occurring. The term of office of such trustee so appointed shall be three years from September first following his appointment.

"No person who is unable to read or write shall be appointed a trustee." Section 32 of the Virginia Constitution provides: "Every person *qualified to vote* shall be eligible to any office in the State or of any county, city, town or other subdivision of the State wherein he resides except as otherwise provided in this Constitution, etc."

Now women are *qualified to vote* and hence are qualified to hold any office in the State. The use of the word "he" in the Constitution does not stand in the way, as under the terms of the thirteenth paragraph of Section 5 of the Code of 1919 "a word importing the masculine gender, only, may extend and be applied to females and to corporations as well as males." In our judgment, therefore it is a matter of indifference as to whether Sec. 133 of the Constitution is ratified or defeated. For women being qualified to vote are qualified to fill any office in the State any other qualified voter could. We have always

believed that women were peculiarly fitted to act as school trustees and we proposed to vote for the amendment. We expect to do so anyway, though we believe the amendment is now unnecessary.

"Guilty." What Does a Simple Plea of "Guilty" Mean When the Indictment Is for Murder?

A very interesting case was argued at the September term of our Court of Appeals at Staunton and which will probably be decided before this number of the REGISTER reaches our readers.

One, Williams, was indicted in the corporation court of the City of Lynchburg at its May term 1920. The indictment was in the usual form, alleging a felonious, wilful and malicious killing. To this indictment the defendant pleaded "Guilty," and the judge, acting under Sec. 4900, heard and determined the case without the intervention of a jury, found the prisoner guilty of murder in the first degree, and sentenced him to be electrocuted. From this sentence he appealed. The important question in the case in our judgment is as to the effect of this plea.

The indictment was unquestionably an indictment for murder in the first degree. It is true that under it a jury could have found the prisoner guilty of any degree of murder, or of manslaughter. Under Section 4900 of the Code "in such cases," i. e., where the prisoner pleads guilty, "the court shall have and exercise all the powers, privileges and duties given to juries by Sections 4762, 4783, 4818, 4920, 4921, 4922, or any other statute relating to crimes and punishments." But by Section 4919 the Code provides that in case of an indictment for murder "if the accused confess the indictment to be true the court shall ascertain the extent of the punishment within the same bounds," i. e., Sections 4394 and 4395, "and give sentence accordingly." Sections 4394 and 4395 define the punishment for murder in the first and second degrees. Reading Sections 4900 and 4919 together it seems to us that the latter section is to confine the judge in cases of murder to the mere fixing of the extent of the punishment. Otherwise that section would be useless. Section

4919 has been materially changed from a somewhat similar section in the Code of 1887. It was formerly provided that the jury should in their verdict find whether the prisoner was guilty of murder in the first or second degree. The changes in Sections 4394 and 4395 made it necessary specifically to provide that the jury in their verdict should fix the degree of murder and ascertain the extent of the punishment to be inflicted within the bounds of those sections.

Now the interesting question arises, What did the plea of guilty mean? It was within the province of the prisoner to plead, "Guilty of murder in the second degree," or "Guilty of manslaughter." But by his plea of "Guilty" the prisoner confessed the indictment to be true. The indictment was for murder in the first degree. Confessing this indictment to be true, could the court do anything but simply proceed to fix the extent of the punishment—i. e., death or confinement in the penitentiary for life or for twenty years?

This was the argument advanced by the Commonwealth, and a large number of authorities quoted to sustain the contention that a plea of guilty to an indictment for murder necessarily means a plea of guilty to the highest degree of the offense which the indictment charges. *Green* v. *Commonwealth,* 12 Allen (Mass.) 155; *Territory* v. *Miller* (Dak.), 29 N. W. 7. 1 Bish. Crim. Proc. 1005a; *Green* v. *U. S.* (40 App. S. E. 426), 46 L. R. A. (N. S.) 1117. On the side of the prisoner it was urged that the court having and exercising all the powers, privileges and duties given to jurors should have determined the degree of the guilt as if the prisoner had pled guilty of unlawful homicide, and that under the indictment in the case at bar, the prisoner stood charged with only murder in the second degree, it being the duty of the Commonwealth to show by proper evidence a higher degree of murder, and the duty of the prisoner to reduce by evidence if he could the crime to a lower degree.

Of course the decision of the court in the present case will settle the matter as far as this State is concerned, but we think it would be wise for counsel whose client wants to plead guilty to advise him as to the degree of the crime to which he desires to plead guilty.

Threatening the Judiciary.

We wonder what would happen to any organization or set of men who would solemnly pass a resolution and have it transmitted to a judge offering him a reward if he enforced the law. The nation would stand aghast, the pulpits would thunder and the judge to whom the communication would be sent would in very short order have the transmitter of the resolution behind the bars for contempt. And yet there seems to be no interest aroused at the converse of the proposition when it is announced that the Anti-Saloon League in its meeting in Washington, in September, solemnly determined that Federal Judges throughout the Nation were to be formally warned that unless they "sacredly perform their sacred duties in connection with the enforcement of prohibition statutes" their impeachment will be sought by the Anti-Saloon League.

A committee when we last heard from the meeting was preparing the resolution which doubtless was adopted by the League, to be transmitted to the judiciary.

If the promise of a reward is the grossest kind of contempt, is not the threat of punishment even grosser? It seems to us that the Anti-Saloon League is beginning to assume the position of the Supreme Arbiter of the World and that the prohibition law is to be ranked far above the first and great commandment. There really does seem a sort of insanity in the brains of the most ardent prohibitionists. With the salaried officials we can understand the reason for the agitation, the abuse of everybody who does not agree with them. The just cannot in this case live by faith. They want a more substantial way of living and with the passage of the amendment their occupation seemed gone. Hence they must agitate. We believe in the absolute and fearless enforcement of the law. Every good citizen should see to it that this law—no matter what he thinks about it—should be enforced and should do all he can to encourage the enforcement. We have laws on the Statute Books against murder, theft, adultery, fornication. Are not these crimes as grave, if not graver than violations of the prohibition laws? And yet have we ever heard of any associations to have the laws against murder, theft, adultery or fornication enforced? Have we ever heard of any

such association solemnly resolving to warn judges that they will be impeached unless they do their duty in punishing these crimes.

We say in all seriousness that no more outrageous attack upon the judiciary has ever been made, if such a resolution passes.

If the resolution is proper we make a suggestion, which if followed will prove the sincerity of those offering it and by which the Federal Judges can obtain direct information as to what is in store for them in case they fail to heed the warning. Let a man or woman for each Federal Court be selected to present in person to each Federal Judge, in open court a copy of the resolution. This will at once show that the League has the courage of its convictions and means business. Otherwise it will look like a cowardly threat for which no one has the courage to be held responsible, ranking with anonymous letters and we have no doubt will be received by the judges with the same contempt with which they would receive an anonymous communication.